



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 7569-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, USN,
█

Ref: (a) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his discharge be upgraded from an "Other than Honorable" (OTH) to "Honorable" (HON) characterization of service, that his narrative reason for separation be changed from "Misconduct" to "Secretarial Authority," and that his reentry code be changed from RE-4 to RE-1 on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 16 October 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include reference (b).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. Petitioner enlisted in the United States Navy and began a period of active service on 11 August 1992.

d. Petitioner was given 30 days leave (from 3 June to 3 July 1994) for the express purpose of sorting out his family difficulties. After the expiration of the approved leave period, Petitioner

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[REDACTED]

was absent without authorization for 53 days before turning himself in to the command. He was in an unauthorized absence (UA) status from 3 July 1994 to 26 August 1994.

e. On 2 September 1994, Petitioner was found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for the 53-day period of UA. He was sentenced to reduction in rank to E-1 and 53-days restriction.

f. On 21 September 1994, Petitioner's command initiated administrative separation (ADSEP) proceedings by reason of misconduct due to commission of a serious offense. Petitioner elected his right to consult with qualified counsel and waived his right to a hearing before an ADSEP Board. Petitioner was notified that the least favorable characterization of service was an OTH.

g. Petitioner was separated from the Navy on 27 October 1994 with an OTH characterization of service, a narrative reason for separation of "Misconduct," a separation code of "HKD," and a reenlistment code of "RE-4."

h. In his request for relief, Petitioner apologizes for his mistake and explains that he would have never committed such misconduct if he hadn't been struggling with serious family issues. For purposes of clemency and equity consideration, Petitioner provided evidence of post-service accomplishments and character letters.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b).

With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of reference (b), after reviewing the record holistically, given the totality of the circumstances and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions). Further, the Board determined Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a "Secretarial Authority" discharge. In making its findings, the Board noted the mitigation evidence submitted by Petitioner.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and the personal stressors that he was suffering at the time he committed the misconduct. However, The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board highlighted that an Honorable

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[REDACTED]

discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. The Board felt that the Petitioner should have tried to continue working with his command for resources during this difficult time, vice terminating communication and choosing to go UA. The Board noted that even though flawless service is not required for an honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's purposeful misconduct.

Additionally, the Board concluded Petitioner's reentry code should remain unchanged based on his record of misconduct and unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 27 October 1994, the characterization of service was "General (Under Honorable Conditions)," the narrative reason for separation as "Secretarial Authority," the separation authority as "MILPERSMAN 1910-164," and the separation code as "JFF."

No further changes be made to Petitioner's record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/26/2023

